

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DINO ANTOLINI, :

Case No.: 18-cv-07645

Plaintiff, :

EXPERT DECLARATION

- against - :

BARBARA NIEVES, 195 10TH AVE, LLC,  
GASPARE VILLA, ANNA DASILVA and  
SONNY LOU, INC., :

Defendants. :

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Billy Chen, R.A., an Architect licensed in the State of New York, affirms the following to be true pursuant to 28 U.S. Code § 1746.

1. I am an Architect for Plaintiff herein, and as such I am fully familiar with the facts and circumstances. This Declaration is respectfully submitted in support of my own Expert's Report.

2. I am a licensed architect in New York State and have been for over twenty-five years.

3. I am a member of the American Institute of Architects, the "National Voice of the Architectural Profession." <https://www.AIA.org/about>.

4. I have been retained as an expert in numerous other ADA Title III lawsuits and completed inspections and reports of other discriminatory facilities.

5. I compiled my report concerning the facility at 195 10<sup>th</sup> Avenue, New York, New York to analyze the ADA violations. My report is a compilation of my professional

opinions based upon my requisite licensing, decades of experience, and professional acumen.

6. In compiling my report I took numerous measurements and estimations of the front sidewalk in front of Pepe Giallo, the raised front step that leads into the restaurant, and the interior of the public dining area along with photographs of the relevant areas. Most relevantly, I noted that the platform landing in the immediate entry way is 36" by 36" and the fire escape ladder hanging from above juts out about 8" from the wall. The fire escape ladder extends all the way down to approximately 1 inch above the ground when it is completely extended.

7. The report reflects that the current entrance leading into the restaurant is not ADA compliant and prohibits access to the facility for a wheelchair bound person because there is a step raised approximately six inches above the sidewalk. Furthermore, the push and pull of the exterior door is not ADA compliant.

8. As noted in my Report, there exists a rear dining area and there is a one-inch sill which is also non-compliant. It does not allow access for those going into the dining area who are physically disabled.

9. Upon further review, the inside service counter is also non-complaint depending upon its usage, which information was not provided to me and might not be an ADA issue.

10. I do not agree with the restaurant's expert's opinions and conclusions about the installation of ADA permanent compliant ramp to gain access to the restaurant.

11. There is a necessary process in seeking to remediate the entrance with a ramp. You would need to apply to the Department of Transportation, 'DOT,' for

a variance to encroach onto the city sidewalk beyond 42" or 44". The department would probably provide it but it of course cannot be assumed, yea or nay. If the ramp is within 44" of the city sidewalk, the owner would just needs to file it with Department of Buildings, 'DOB.' If it is beyond 44" the owner would then need to file it with both DOB and the DOT would need to approve it prior to being approved by DOB. There is no way to guarantee what will happen until the process starts and any claim to the contrary is false.

12. The installation of the permanent ramp will not affect the structural integrity or makeup of the building and the process to obtain approval becomes much easier as this building is not on the historic registry and the building has been renovated before, meaning that means DOB is more likely to let the ADA repairs to begin.

13. Ramp installation at this facility should not cost more than approximately \$5,500.00. Upon my own significant experience, familiarity with the facility, and options available at <https://www.ezaccess.com/ada-compliant-ramps> The EZ Access Titan model can be used. This estimate is made with a high degree of architectural certainty.

14. After the owner applies for and obtains a variance from DOT, the ramp needs only to be slightly turned/angled (exact angle to be determined when work order plans are fully submitted) to make it work within the parameters of the sidewalk. The current outdoor seating is unknown because I believe that the seating has been pushed further away from the building for COVID-19. The outdoor tables are no more than 3 feet in diameter and can be arranged with the ramp. Either way, it can be set up to conform with the ramp and the handrails which only need to be a foot high, without losing seating area. In terms of the fire escape, the ladder is always out-

maximum. The ladder should land on top of the new extended landing and still be within the 5' by 5' requirement. That would not be a major issue and would comply with fire code as 195 10<sup>th</sup> Avenue is only a 5-story building. The defendant architect has not stated what provision he believes are at issue but the fire escape ladder, as I observed, extends far down and does not actually touch the ground. It actually stops only approximately 1'-0" above the ground, so it satisfies the 'safe landing' provision of the NY Fire Code.

15. In regards to the defendant architect's comment about sidewalk café, it is actually under the jurisdiction of the New York City DCA (department of consumer affairs), and not DOT. They have guidelines which they need to follow as per DOT requirement. As long as you are able to meet the guidelines and apply for any waiver, they would give it to you. In addition, they will take into account the required seating for the sidewalk café. Also, the Department of Consumer Affairs has a requirement for ADA access into the restaurant if there is a change of level.

16. The following quote is from the New York DCA handbook. "ACCESS 'TO PERSONS WITH PHYSICAL DISABILITIES': Sidewalk cafés must be accessible to persons with physical disabilities and in full compliance with the Americans with Disabilities Act. At least one door into the café or restaurant must be a minimum of three (3) feet wide. In addition, a non-skid ramp may be required if there is a change in grade."

17. I am willing to work with defendants architect to help figure out the repairs as this job can be accomplished.

Executed this 16<sup>th</sup> day of April, 2021



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Billy Chen, RA